

TO MAKE A TECHNICAL CORRECTION TO TITLE 28, UNITED STATES CODE, RELATING TO JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES

APRIL 10, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1225]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1225) to make a technical correction to title 28, United States Code, relating to jurisdiction for lawsuits against terrorist states, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R.1225 makes a technical correction to the foreign sovereign immunity provisions of the Antiterrorism and Effective Death Penalty Act of 1996.

BACKGROUND AND NEED FOR THE LEGISLATION

In response to the revelation that the Libyan government assisted in blowing up Pan Am 103 over Lockerbie, Scotland, the “Antiterrorism and Effective Death Penalty Act of 1996” added a new subsection to the foreign sovereign immunity provisions included in Title 28 of the United States Code, Section 221 of Public Law No. 140–132. See 28 U.S.C. § 1605(a)(7). This new subsection provided that foreign sovereign immunity would not shield from liability certain countries that sponsor terrorist acts against American nationals, like the bombing of Pan Am 103. Under the new subsection, American nationals who are victims of such acts or their surviving claimants could bring an action in federal court for money damages against the country that sponsored the terrorist act.

The intent of the drafters was that a family should have the benefit of these provisions if either the victim of the act or the survivor who brings the claim is an American national. Due to a drafting error, the current law can be read to require that both the victim and the claimant must be American nationals before the claimant can use these provisions. H.R. 1225 corrects this drafting error and makes it explicit that the correction should apply to cases arising before, on, or after the date of enactment. The correction will benefit several of the Pan Am 103 families who could potentially lose their claims if this correction is not passed.

HEARINGS

Because H.R. 1225 involves only a technical correction, the Committee did not hold any hearings on it.

COMMITTEE CONSIDERATION

On April 8, 1997, the full committee met in open session and ordered reported favorably the bill H.R. 1225, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

During full committee consideration of H.R. 1225, the Committee took no roll call votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1225, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 9, 1997.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1225, a bill to make a technical correction to title 28, United States Code, relating to jurisdiction for lawsuits against terrorist states.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 1225—A bill to make a technical correction to title 28, United States Code, relating to jurisdiction for lawsuits against terrorist states

CBO estimates that enacting this bill would have no significant effect on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 1225 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995, and would not impose any costs on state, local, or tribal governments.

Enacting H.R. 1225 would enable U.S. citizens to sue terrorist states for committing acts of terrorism against a loved one even if the loved one was a foreign national. Under current law, a lawsuit against a terrorist state may only be brought if the victim was a U.S. citizen. Because the circumstances under which such lawsuits would be filed are rare, CBO expects that few additional cases would come before federal courts as a result of this bill. Thus, CBO estimates that enacting H.R. 1225 would not result in any significant cost to the federal court system.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, clause 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

H.R. 1225 consists of one section that corrects the drafting error described above by making it clear that the provisions of 28 U.S.C. § 1605(a)(7) and related provisions apply when either the victim or the surviving claimant is an American national. This section also makes it explicit that the correction applies to causes of action arising before, on, or after the date of enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1605 OF TITLE 28, UNITED STATES CODE

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) * * *

* * * * *

(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph—

(A) if the foreign state was not designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred, unless later so designated as a result of such act; and

(B) even if the foreign state is or was so designated, if—

(i) the act occurred in the foreign state against which the claim has been brought and the claimant has not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; or

(ii) **【the claimant or victim was not】** *neither the claimant nor the victim was* a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred.

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